

# Construction Industry Coalition on Water Quality

November 28, 2006

Sediment Quality Obj.  
Deadline: 11/28/06 5pm

## VIA E-MAIL AND U.S. POSTAL SERVICE

Ms. Song Her  
Clerk to the Board, Executive Office  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Re: Comment Letter – Sediment Quality Objectives

Dear Ms. Her:

On behalf of the more than 3,300 member companies of the Construction Industry Coalition on Water Quality (CICWQ), we are submitting comments in response to the State Water Resources Control Board ("SWRCB") Notice of Public Scoping Meeting ("Notice") dated September 22, 2006, which states that the SWRCB is seeking "written comments and oral suggestions on the scope and content of the environmental information that should be included in the environmental document" that will be prepared for the Sediment Quality Objectives for Enclosed Bays and Estuaries of California ("SQOs").

CICWQ is comprised of the four major construction and building industry trade associations in Southern California. These include the Associated General Contractors of California (AGC), the Building Industry Association of Southern California (BIA/SC), the Engineering Contractors Association (ECA) and the Southern California Contractors Association (SCCA). The membership of CICWQ is comprised of construction contractors, labor unions, landowners, developers, and homebuilders throughout the region and state. These organizations work collectively to provide the necessary infrastructure and support for the region's business and residential needs. All of the member companies represented by CICWQ are impacted by the development of sediment quality objectives, as are hundreds of thousands of construction employees throughout California, and builders working to meet the ever-growing demand for housing.

The Notice states that the SWRCB is "specifically seeking recommendations and suggestions on the range of actions, alternatives, mitigation measures, and potential significant effects to be analyzed in the environmental document." Because the SQOs and the potential range of actions raise several technical and policy issues, in addition to environmental issues and the scope of the environmental document, our comments are provided in two separate letters. First, this letter briefly sets forth some of our general, technical and policy concerns. Second, additional and more in depth concerns, including about environmental document issues under the California Environmental Quality Act ("CEQA"), are set forth under in a separate submittal prepared and submitted on our behalf by the law firm of Nossaman, Guthner, Knox, & Elliott, LLP.

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Concerning the overall need for SQOs, the SWRCB should not dictate a policy resulting in the adoption of numeric water quality objectives that will be enforced via NPDES permits generally and for a broad range of pollutants. Instead, the SQO guidance should focus on establishing objectives and subsequent implementation measures to address pollutants only where there is some affirmative evidence that contaminants are impairing beneficial uses for the particular water body to which the objectives and measures might be applied. Where SQOs are appropriate, the regional water quality control boards are themselves in the best position to develop and prioritize implementation measures that are linked to the conditions in any water body at issue. Certainly the regional boards would benefit from SWRCB guidance in doing so. However, suggested implementation measures should be aimed at the restoration and protection of beneficial uses, not toward meeting particular numeric standards.

Wherever it can be established that a beneficial use is not impaired, SQO efforts should be appropriately excused. Similarly, where a water body is shown to be impaired by only one pollutant, suggested implementation measures should be narrowly focused on the one pollutant, rather than upon the full range of possible contaminants, including those not shown to be impairing the beneficial uses. In this way, regulators and the regulated community can focus their attention and limited resources appropriately on the actual causes of toxicity and impairment.

The science supporting the SQOs should be transparent and publicly vetted. This includes the science to support the key regulation points, such as determining impairment, determining appropriate level of treatment/regulation, and determining which pollutants warrant further regulation. To this point, regional technical advisory committees should be established to supplement the Scientific Advisory Board. Such committees will increase transparency and local scientific input and assist in keeping implementation measures relevant to region specific compounds and the current water body conditions in each region. This will also increase the understanding of naturally occurring compounds and how those affect the sediment contamination levels.

While the program goal is to establish conditions that are considered protective for each targeted receptor, it is equally important that an appropriate range of receptors be identified to allow sufficient flexibility to define region-specific receptors. For example, while it may be appropriate in one region to identify human receptors that are burdened with a chemical/toxics load, such a condition may not realistically exist in another region.

The SWRCB's SQOs program will act essentially as a pilot program for a number of bays and estuaries, to then be used to determine the appropriate methodology for setting SQOs for bays and estuaries statewide. In pursuing this effort, the SWRCB must set up a methodology for the adoption of SQOs which includes conducting and completing sufficiently water-system-specific scientific study as necessary to identify pollutants that are causing actual adverse effects and impairment of bays and estuaries before setting any numeric objective. Accordingly, the SWRCB should follow the Scientific Advisory Board's recommendation to delay development of SQOs for estuaries until additional studies can be performed which allow development of scientifically valid testing approaches. The testing methods outlined in the Report have been developed for enclosed bays and are extrapolated, with little scientific validation, into the estuary

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setting. Of course, even more study should be undertaken before imposing requirements still farther upstream.

The standards set forth should not include the creation of merely "detection-based" action levels to be followed by requirements for action and remediation. Instead, the SWRCB should foster specific and water body-based scientific programs and evaluate the degree to which existing sediment conditions are causing harm to particular water bodies. Accordingly, SQOs should be set only for those actually harmful pollutants – and implementation measures should be appropriately targeted.

Concerning implementation measures, the Draft Plan states that regional boards shall not approve a dredging project that involves the dredging of sediment that exceeds the objectives in the Plan unless certain determinations are made. (Informational Document, p. 38.) One of these determinations is that polluted sediment is removed in a manner that prevents or "minimizes" water quality degradation. It is likely that in at least some instances dredging will be an optional clean-up method to address significant degradation determined according to the Plan. However, the mandated determination may be used to prohibit dredging when one person concludes that water quality degradation is not "minimized." Unless clarified, this requirement may not allow sufficient flexibility to move forward with beneficial clean-up efforts, leaving the water body in a perpetual state of impairment with all of the attendant discharge regulations and prohibitions. Desirable dredging may, in fact, result in significant short-term water quality degradation, but query whether it would be allowed under the condition as written. This condition should therefore be modified or explained to allow for flexibility to weigh the benefits and risks associated with short-term water quality degradation versus leaving polluted sediments in place.

Concerning upstream dischargers, the proposed SQOs would introduce narrative objectives for receiving waters and provide methods by which impacted waters can be identified, but leaves open what measures may be required when significant degradation is found. Although site-specific flexibility is certainly appropriate, the Preliminary Draft Plan provides no meaningful indication to the regional boards or the regulated community of appropriate preventative and clean-up activities, determining when beneficial uses have been restored as a result of such activities, or, perhaps most troubling, what levels of imposition upstream dischargers might suffer. We therefore request clarification of the upstream limits of SQOs and the regulatory reach of such standards, particularly in that the informational document lacks specificity in this regard – and is therefore unbounded. The Informational Document (at p. 34) discusses the imposition of upstream NPDES permit requirements wherever a "discharge ... has a reasonable potential to ... contribute to a violation of an applicable SQO..." Reasonable persons (let alone others) could develop widely divergent opinions about when and where such a threshold has been crossed. Accordingly, the SWRCB should instead consider developing an appropriate and material-risk-based approach to imposing upstream requirements through the NPDES permit system.

Indeed, the Plan requires any NPDES permittee discharging any toxic or priority pollutant that has a reasonable potential to accumulate in sediments (at levels that have a reasonable potential to cause or contribute to an SQO exceedance) to conduct chemical testing of sediments for all 53 constituents listed in Appendix A. It is plainly unreasonable to require a

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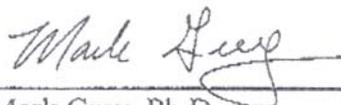
discharger that discharges one or two particular pollutants to conduct testing for 53 constituents, almost all of which are not associated with the relevant discharge or the water body's impairment. As staff noted in its presentation, regional monitoring coalitions are desirable for a number of reasons discussed in the Informational Document (pp. 52-53). We strongly encourage SWRCB staff to provide that permittees may be relieved of individual monitoring requirements in a number of circumstances (e.g., by electing to participate in regional monitoring groups, wherever dry-weather sampling indicates, etc.).

Lastly, the SQOs seek to solve a problem that is already being addressed through extensive regulation. The SQOs as proposed appear to create new regulations applicable to any discharges that might reach an enclosed bay or estuary, and would prohibit discharges altogether in certain areas. As a result, the SQOs are almost certain to result in duplicative and unnecessary regulation. The Plan itself recognizes this possibility, by stating that if a TMDL and basin plan amendment address specific pollutants in sediment, "no further action is required" except for collecting data and restoring the beneficial use. (Plan, D. Existing Management Actions, page 55.) At a minimum, therefore, the SWRCB's guidance should specify that existing TMDLs and NPDES permits, as well as entire basin plans (including their objectives and standards), may need to be reopened and revisited as a result of the studies that might lead to SQOs.

There is also no attempt in the Issues and Alternatives analysis or the Plan to correlate the sources of contaminants and methods of prevention with existing regulations that control sediment contamination. For example, there is no attempt to correlate the five major types of pollutants found in sediments (nutrients, bulk organics, halogenated hydrocarbons or persistent organics, polycyclic aromatic hydrocarbons, and metals/metalloids according to the U. S. EPA) with existing controls for those sources. See the EPA website section "Contaminated Sediment in Water," which notes that sources of contaminated sediments include industrial and municipal waste dischargers, polluted runoff in urban areas, and local sources such as materials from drains, driveways and lawns. (<http://www.epa.gov/waterscienc/c/s/>, accessed November 25, 2006.) All of these sources (especially the most problematic sources identified) are already subject to extensive regulation. The SWRCB should therefore be very careful – when setting forth guidance – to avoid the potential for more confounding and redundant regulation of all potential sources.

CICWQ appreciates the opportunity to comment on the development of Sediment Quality Objectives for Enclosed Bays and Estuaries of California. If additional input is needed from the construction industry, please do not hesitate to contact Mark Grey at (909) 396-9993, x. 252 or via email at [mgrey@biasec.org](mailto:mgrey@biasec.org).

Sincerely,



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Mark Grey, Ph.D.  
Director of Environmental Affairs  
Construction Industry Coalition on Water Quality